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In the
Supreme Court of the United States

OCTOBER TERM, 1964

No. 968

WM. H. SIMMONS, *Petitioner*

vs.

THE STATE OF WASHINGTON, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT

WM. H. SIMMONS
Petitioner

12513 24th Avenue N.E.
Seattle, Washington 98125

THE ARGUS PRESS, SEATTLE, WASHINGTON

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PETITION FOR WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT

OPINIONS BELOW

In re Simmons (1964) 395 P.2d 1013, set forth in the Appendix.

JURISDICTION

a. Grounds:

First: The State wilfully denied Petitioner due process rights, guaranteed by the Fourteenth Amendment, by refusing to recognize his right to discovery process in disbarment proceedings.

Second: The State punished Petitioner with disbarment for the exercise of his right of free speech, in violation of the 1st, 5th and 14th Amendments of the Federal Constitution.

b. Date of Judgment: December 7, 1964

Under Rule 15 of the Rules Peculiar to the Business of the Supreme Court of the State of Washington, the decision, dated and filed October 22, 1964, was to ". . . be final thirty days after its filing, unless during such

period a petition for rehearing be filed." Such was properly filed and, after consideration, it was denied. The date of denial is December 7, 1964.

c. Statutory provisions: 28 U.S.C. 1257 (3):

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court as follows:
>
> (1) . . .
>
> (2) . . .
>
> (3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution . . . of . . . the United States."

QUESTIONS PRESENTED

1. May a lawyer be disbarred for legitimate public criticism of public officials?

2. Is a lawyer entitled to due process in a State disciplinary proceeding; and, if so: Does due process include the right of discovery so an accused lawyer may ascertain the evidence and charges in order to prepare and present his defense, if any?

CONSTITUTIONAL PROVISIONS

United States—First Amendment:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

United States—Fifth Amendment:

> "No person shall . . . be deprived of life, liberty or property without due process of law. . . ."

Washington State—Article I, § 2:

> "The Constitution of the United States is the supreme law of the land."

Washington State—Article I, § 3:

> "No person shall be deprived of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

Petitioner was admitted to practice in Washington on September 10, 1952. On December 7, 1964, he was disbarred. The basis of the disbarment is defined and limited in the official opinion set forth in the Appendix, as follows:

> "In our review of the record . . ., we *narrow and limit our consideration and conclusions* to those findings concerning utterances made by respondent during the week in question, with respect to the city officials, the prosecuting attorney, the *quo warranto* and contempt proceedings, and the superior court judge before whom the latter proceedings were heard." (Emphasis supplied)

On August 10, 1962, one month prior to the disbarment hearing, and, pursuant to Rule 33, Petitioner submitted written interrogatories to the Bar Association. Under the provisions of that rule, the Association was required to supply answers thereto within fifteen days, or in the alternative:

> ". . . serve written objections thereto with a notice of hearing the objections at the earliest practicable time."

Objections were not served, nor were answers supplied. After the expiration of the fifteen-day answering period, Petitioner served and filed the following written demand:

> "Comes now Respondent and respectfully demands that the Bar Association forthwith and immediately serve its answers to Respondent's interrogatories. The interrogatories were served August 10, 1962, and Rule 33 of the Rules of Pleading, Practice and Procedure requires that answers shall be served thereafter within fifteen days. You are hereby notified that in order for Respondent to be adequately and sufficiently prepared for a hearing by September 10, 1962, the answers must be served without further delay.
>
> "DATED this 29th day of August, 1962."

This demand was ignored. Subsequently, on September 10, 1962, the date of the hearing, Petitioner objected to the hearing on the grounds he was being denied due process of law. His objections were overruled. There is no question of waiver. The following extracts from the record are unimpeachable:

> "MR. LONG [Association Counsel] However, I understand that the Respondent wishes the record to show that he does not waive or has not waived his right to have answers furnished him to the interrogatories which were submitted. Is that a correct statement of your position, Mr. McIntosh?
>
> MR. MCINTOSH [Petitioner's Counsel] Yes. We will ask that the record show that specifically (St. 6:5)
>
> * * *
>
> MR. SIMMONS: It was your understanding, from your position, that Respondent at this hearing did

not, by entering into the stipulation or otherwise, waive what he thought was his right to have those interrogatories answered?

MR. LONG: That is correct. (St. 6:5 and following)

* * *

CHAIRMAN McMULLEN: ... Now, Mr. Simmons objected to the proceedings. I suppose you meant by that to this hearing proceeding today, because of the failure of the Bar Association counsel to answer your interrogatories?

MR. McINTOSH: Yes. (St. 9:5)

* * *

MR. McINTOSH: Well, whatever your understanding was with Mr. McIntosh's position on the phone concerning the interrogatories, you were aware that the position was that we had been deprived of a proper defense?

MR. LONG: Yes. I received your demand too, yes." (St. 167:7-13)

The Bar Association had charged that Petitioner made "numerous" statements and comments, "many" of which were violations of ethical standards. Such statements formed the ultimate basis sustaining disbarment. The failure of the Association to answer the interrogatories prevented Petitioner from learning the "many" of the "numerous" alleged improper statements. He could not speculate on what the "many" of the "numerous" were. Thus, he could not prepare his defense. Thus, he was denied due process. This claim was rejected by the Association and the Washington Supreme Court—Cf: Appendix.

ARGUMENT

Reasons for Granting Writ:

The discovery rules as well as those for disciplining attorneys are substantial duplicates, procedure-wise, in California and Washington. The discovery rules in Washington are patterned after the federal rules. Both states have Rule 33. Washington also has the following:

> "Depositions for use at the hearing may be taken either within or without the state, upon either written or oral interrogatories before any member of the panel or before any other officer authorized to administer an oath by the law of the jurisdiction where the deposition is taken. The manner of taking such depositions shall conform as nearly as practicable to that prescribed for the taking of depositions in the superior court of the State of Washington except as otherwise provided in these rules." (Rules for Discipline of Attorneys, Rule 7, J)

Under the dominion of the Federal Constitution, as the supreme law of the land, citizens of Washington and California are entitled to equal due process. Washington has denied Petitioner the constitutional protection he would have been accorded as a citizen in California. The following excerpts fully sustain this declaration:

> "We do not reach the interesting question as to whether respondent was entitled, as a matter of procedural process, to demand and receive answers to his prehearing written interrogatories." (*In re Simmons* (1964) Appendix)

On the identical issue, California said:

> "The issues before us demand determination of

> whether or not a right exists to have discovery by deposition and other vehicles (including interrogatories and production of documents)." (*Brotsky v. State of California* (1962) 368 P.2d 697, 703)

The *Brotsky* decision not only meets the issue but also declares the right.

Petitioner reasons and suggests to this Court, that the inconsistent decisions of Washington and California are of some moment in determining the propriety of granting this writ. Also, since Petitioner is presently qualified to practice law and is permitted to practice law in the U.S. District Court as well as the Ninth Circuit Court of Appeals, this should be considered. Finally, fundamental federal issues are presented concerning due process and free speech.

The Washington Court has already determined these issues contrary to the decisions of this Court and the provisions of the Federal Constitution.

Petitioner feels that the unjust deprivations he has been relegated to suffer should be corrected. The issues presented are precise and the rights involved are serious. Such merits granting this petition. The following excerpts express Petitioner's views and, being unable to improve on the language, Petitioner adopts same:

> " 'A claim of a present right to admission to the bar of a State and a denial of that right is a controversy' . . . Moreover, the requirements of procedural due process must be met before a State can exclude a person from practicing law. 'A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amend-

ment.'" (*Willner v. Committee on Character* (1963) 373 U.S. 96, 102 — quoting *Schware v. Board of Bar Examiners* (1957) 353 U.S. 232, 238)

"It is, of course, a familiar principle that this Court will decline to review state court judgments which rest upon independent and adequate state grounds. . . . But it is important to distinguish between state substantive grounds and state procedural grounds. . . . Accordingly, we have consistently held that the question of when and how defaults in compliance with state procedural rules can preclude our consideration of a federal question is itself a federal question." (*Henry v. Mississippi* (Jan. 18, 1965) No. 6, October Term, 1964)

"The constitutional requirements in this context may be simply stated; in all cases in which admission to the bar is to be denied on the basis of character, the applicant, at some stage of the proceedings prior to such denial, must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence." (*Willner v. Committee on Character* (1963) 373 U.S. 96, 107—Mr. Justice Goldberg concurring with Mr. Justice Brennan and Mr. Justice Stewart joining.)

"We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak, and act as members

of an Independent Bar." (*Konigsberg v. State Bar* (1957) 353 U.S. 252, 262)

"For a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." (*N.A.A.C.P. v. Button* (1963) 371 U.S. 415, 439)

"This Court's duty is not limited to the elaboration of constitutional principles; we must also in proper cases review the evidence to make certain that those principles have been constitutionally applied. This is such a case, particularly since the question is one of alleged trespass across 'the line between speech unconditionally guaranteed and speech which may legitimately be regulated.' . . . In cases where that line must be drawn, the rule is that we 'examine for ourselves the statements in issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect.' . . . We must 'make an independent examination of the whole record,' . . . so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression." (*New York Times v. Sullivan* (1964) 376 U.S. 254, 285)

"For speech concerning public affairs is more than self-expression; it is the essence of self-government. The First and Fourteenth Amendments embody our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.'" (*Garrison v. Louisiana*, October Term, 1964, November 23, 1964, No. 4)

CONCLUSION

It is sincerely believed that this petition has merit. Therefore, Petitioner urges the Court to act favorably.

Respectfully,

WM. H. SIMMONS, *Pro se*

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Seattle, Washington 98125

APPENDIX

OPINION OF THE SUPREME COURT OF THE STATE OF WASHINGTON

[C.D. 4026 En Banc. October 22, 1964.]

In the Matter of the Disciplinary Proceedings Against WILLIAM H. SIMMONS, *an Attorney at Law.*

Proceedings filed in the Supreme Court July 2, 1963, for the discipline of an attorney. *Judgment of disbarment.*

[All bold emphasis supplied by Petitioner, hoping such will help the reader perceive more readily and accurately, the basic problems.]

HAMILTON, J.—On September 10, 1952, respondent was admitted to the practice of law. He thereupon commenced practice in Seattle, King County, Washington. In November, 1958, he was elected to and assumed the full-time position of Judge of the Municipal Court of the City of Seattle, Department No. 2. About noon on July 14, 1960, a Mrs. Betty Adams contacted respondent, in his official capacity, relative to a traffic citation. After some discussion, respondent endorsed the citation as a "warning." Mrs. Adams and he then went to a restaurant and cocktail lounge. Following several cocktails and affectionate expressions, they went to an apartment, where disagreement or misunderstanding as to their respective intentions developed. They left the apartment, respondent returning to his office and Mrs. Adams to downtown Seattle. As an outgrowth of this incident, respondent was charged with a felony—assault with intent to commit rape. Respondent pleaded not guilty. A jury trial ensued resulting in a verdict of guilty.

On February 21, 1961, judgment was entered and re-

spondent was sentenced to serve 10 years in the penitentiary, **execution of which sentence was suspended upon condition that respondent resign his position as municipal court judge** [within 48 hours]. Respondent appealed the conviction and continued in his judicial office. [See: *State v. Simmons* (1962) 368 P.2d 378, for description of "fair trial" afforded.]

On March 6, 1961, the council of the city of Seattle passed an ordinance declaring vacant the office of Judge of the Municipal Court, Department No. 2, by virtue of respondent's conviction of the crime charged, and requested the Prosecuting Attorney of King County to institute ouster proceedings. The Mayor of the City of Seattle apopinted a successor and advised respondent of the ordinance and his action. Respondent refused to honor the ordinance or recognize a successor to his office. [This ordinance was void.] He continued to hold court. On the evening of March 6th, the official records were removed from the court offices.

The prosecuting attorney, on March 7, 1961, served and filed an information in quo warranto together with a 20-day summons. At the same time, the prosecuting attorney applied for an order to restrain respondent from acting as judge of the municipal court during the pendency of the quo warranto proceeding. Respondent was directed to appear in superior court on March 8, 1961, and show cause why he should not be so restrained. Respondent continued to hold court despite the absence of official records, clerical personnel, and the city attorney. He dismissed a number of cases for lack of prosecution due to the absence of counsel for the city. He spent the night of March 7th in the chambers adjacent to the courtroom. On March 8th respondent removed a notice of continuance of pending cases posted on the courtroom door by his successor and dismissed additional cases for lack of prosecution.

On the morning of March 8, 1961, hearing was com-

menced in superior court upon the order to show cause and respondent's challenge to the jurisdiction of the superior court. Respondent was personally present for a portion of the hearing in the afternoon, and was otherwise at all times represented by counsel.

The superior court, on the morning of March 9, 1961, orally announced its intention and thereafter formally entered a temporary injunction ordering respondent to forthwith vacate the offices of and to cease and desist acting as Judge of the Municipal Court, Department No. 2, pending further order of the court. The record before us in this proceeding is not clear as to whether or not respondent was personally present in superior court at the time the court orally announced its intention to enter the temporary injunction. In any event, respondent returned to the offices of the Municipal Court, Department No. 2, undertook the performance of some functions in connection therewith, and, at 10:36 a.m., was served with a certified copy of the temporary injunction. At 11:45 a.m., respondent departed the offices. Thereafter, a bench warrant was issued out of superior court directing the sheriff to apprehend and bring respondent before the court to show cause why he should not be adjudged in contempt for his failure or refusal to abide the temporary injunction. The bench warrant fixed bail at $500 and was returnable forthwith, or at 9 a.m., March 10, 1961, if served after 4 p.m. The warrant was served after 4 p.m., and respondent elected not to post bail. As a result, he spent the night in jail. On March 10, 1961, respondent was adjudged in contempt. Respondent did not thereafter seek to physically reclaim or exercise any functions of the office of municipal court judge. He did, however, continue to maintain his claim thereto and to challenge the legality of his removal and of the quo warranto proceedings.

On April 20, 1961, following a contested motion for

summary judgment in the quo warranto proceedings, formal judgment of ouster was entered. Respondent appealed from this judgment. This court subsequently affirmed the judgment. *State ex rel. Carroll v. Simmons*, 61 Wn.(2d) 146, 377 P.(2d) 421.

As might be expected, widespread publicity accompanied the foregoing events. **Extensive coverage was afforded by all news media.** Editorials appeared relating to respondent's activities **and the responsibility of the bench and bar.** A number of **impolitic statements, derogatory** of the city officials, the prosecuting attorney, and the action of the superior court, were **publicly attributed** to respondent.

On July 20, 1961, the Washington State Bar Association initiated disciplinary proceedings by serving a formal complaint, which contained two items of alleged misconduct: (a) The conviction of a crime involving moral turpitude, and (b) the filing of a false affidavit in connection with the appeal of the conviction. Respondent denied the charges. Hearing was deferred pending disposition of respondent's appeal in the criminal proceedings. On January 12, 1962, respondent's conviction was reversed by this court and a new trial granted. *State v. Simmons*, 59 Wn.(2d) 381, 368 P.(2d) 378. The state did not prosecute further.

On June 26, 1962, the bar association served respondent with an amended formal complaint containing nine items of alleged misconduct. Respondent in most part denied the charges and, on August 10, 1961, served interrogatories, going to each of the charges, upon counsel for the bar association. On September 11, 1962, the amended complaint came on for hearing before a hearing panel consisting of one member of the Board of Governors of the Washington State Bar Association, as chairman, and two members of the bar of King County. **Respondent's request for answers to his interrogatories was denied, and the hearing proceeded.** Respondent was

personally present and represented by counsel at all times during the hearing.

On October 3, 1962, the hearing panel filed its findings, conclusions, and recommendations. The hearing panel dismissed four items of alleged misconduct, found respondent had committed five of the items of alleged misconduct, and recommended disbarment. Respondent filed a statement in opposition to the findings, conclusions, and recommendation of the panel. The board of governors, with the exception of the member of the board serving as chairman of the hearing panel, thereafter reviewed the record of the proceedings and, on June 21, 1963, approved and adopted the findings, conclusions, and recommendation of the hearing panel. The proceedings were certified to this court for review and final disposition.

Four of the charges of misconduct, which the hearing panel and the board of governors found respondent had committed, essentially relate to public and published statements made by respondent, particularly concerning the events transpiring during the week beginning on March 6, 1961. In connection with these charges, the hearing panel and board of governors found that respondent did make defiant statements of a derogatory, inflammatory, and offensive nature concerning the actions and attitudes of the city officials, the prosecuting attorney, and the superior court judge hearing the quo warranto proceedings, **when he knew, or should have known, that such statements would receive widespread publication.** The hearing panel and the board of governors took judicial notice, evidentially supported by photostatic copies of numerous newspaper articles, of the notoriety attending the statements and concluded that respondent's **conduct and reflected attitude** constituted, **in varying degrees,** a violation of Rule for Discipline of Attorneys - C. J. and M. and of Canon of Professional Ethics 29, RCW Vol. 0.

The remaining charge of misconduct related to respondent's official and unofficial conduct concerning Mrs. Betty Adams on July 14, 1961. The hearing panel and the board of governors found and concluded, upon this charge, that respondent's conduct violated Rule for Discipline of Attorneys 1, C, J, and M, and Canon of Professional Ethics 29.

Upon review before this court, respondent challenges the findings, conclusions, and recommendation of the hearing panel and board upon four grounds: (1) Denial of his request for answers to his interrogatories; (2) failure or insufficiency of the proof in connection with the four charges relating to respondent's public and published statements; (3) failure to establish a course of conduct demonstrating respondent's unfitness to practice law; and (4) failure to establish moral turpitude in connection with the charge relating to respondent's conduct concerning Mrs. Betty Adams.

[1-3] Before approaching a consideration of the findings, conclusions, and recommendation and respondent's challenges thereto, we make the following observations:

(1) A disciplinary proceeding is basically an inquiry into the fitness of a member of the bar, in the light of his conduct, to continue in the practice of the law. It is a special proceeding, neither civil nor criminal, incident to the inherent power of the court to control its officers. It is *sui generis*. *In re Sherman*, 58 Wn.(2d) 1, 354 P.(2d) 888; *In re Little*, 40 Wn.(2d) 421, 244 P. (2d) 255.

(2) Admission to the practice of law before the courts of record of this state is a prerequisite to holding the office of judge of the Municipal Court of the City of Seattle (RCW 35.20.170), and a judge thereof, although prohibited by statute (RCW 35.20.170) from the practice of law during his tenure, remains a member of the bar of this state (RCW 2.48.021).

(3) By the terms of RCW 9.92.120 and 42.12.010 respondent's conviction, on February 21, 1961, of the felony with which he was charged carried with it the *immediate forfeiture* of his office as judge of the Municipal Court of the City of Seattle, and *then created a vacancy* in that office. Quo warranto proceedings were merely ancillary to and in aid of the forfeiture, not a condition precedent thereto. Appeal from the conviction did not stay the forfeiture, and appellate reversal of the conviction did not reinstate respondent. *State ex rel. Carroll v. Simmons, supra; State ex rel. Zempel v. Twitchell*, 59 Wn.(2d) 419, 367 P.(2d) 985; *State ex rel. Austin v. Superior Court*, 6 Wn.(2d) 61, 106 P.(2d) 1077; *State ex rel. Knabb v. Frater*, 198 Wash. 675, 89 P.(2d) 1046; *State ex rel. Guthrie v. Chapman*, 187 Wash. 327, 60 P.(2d) 245, 106 A.L.R. 640.

Against the backdrop of these observations, we turn to the issues presented.

In support of his first challenge to the findings, conclusions and recommendations in question, **respondent contends that he was entitled, as a matter of right, to receive answers from the Washington State Bar Association to his written interrogatories.** In support of this contention, respondent relies upon the case of *Brotsky v. State Bar of California*, 57 Cal.(2d) 287, 19 Cal. Rptr. 153, 368 P.(2d) 697, 94 A.L.R.(2d) 1310, wherein the Supreme Court of the State of California held that the pretrial discovery statutes of that state were applicable, in toto, to a disciplinary proceeding initiated under the California State Bar Act.

In response to this contention, counsel for the bar association asserts: (a) The Rules for Discipline of Attorneys, RCW Vol. 0, do not, directly or indirectly, provide for or adopt the pretrial discovery procedures allowed by the Rules of Pleading, Practice and Procedure, 26, 30, 33, and 34, RCW Vol. 0; (b) the case of

Brotsky v. State Bar of California, supra, is distinguishable upon the facts and the law; and (c) the respondent was not, in any event, prejudiced by the denial because a prehearing stipulation as to certain evidentiary matters, entered into between counsel for the bar association and respondent, was predicated upon the written interrogatories, and, further the evidence ultimately adduced at the hearing was well within the knowledge of respondent.

[4] We do not reach the interesting question as to whether respondent was entitled, as a matter of procedural process, to demand and receive answers to his prehearing written interrogatories. **Respondent does not point to any prejudice attributable to the failure of the bar association to supply the answers requested. And, after careful examination of the undismissed charges, the interrogatories directed thereto, the prehearing stipulation, and the evidence adduced at the hearing, we find no prejudice. We are satisfied none of the evidence introduced by the bar association, in support of the pertinent charges, came as any surprise to respondent.** [This is a classic in judicial analysis. It is not only contrary to law and reason, but it also renders discovery rights subject to hindsight review. It allows an appellate court to "assume" it knows what the parties know and just how parties take note of "extensive" radio, T.V., and newspaper reports. It pronounces a new doctrine, viz: unless a party, after wrongful denial of discovery, can show surprise concerning evidence, he has not sustained the burden to the extent necessary to show he was entitled to discovery in the first instance. This new doctrine is boldly proclaimed without affording the opportunity to show surprise; and, it completely ignores one's right to prepare before the hearing. This judicial circumvention is totally void of evidentiary support and in conflict with the record.] Accordingly,

we conclude that respondent's challenge upon this score is without merit.

[5] Respondent's second contention challenges the sufficiency of the evidence to support the findings of fact, entered by the hearing panel and adopted by the board of governors, in connection with the four charges relating to respondent's conduct and public utterances during the week commencing March 6, 1961. In support of this contention, respondent cites the case of *In re Little, supra*, a disciplinary proceedings, wherein we stated concerning the burden of proof (p. 430):

"... Every doubt should be resolved in his [the attorney's] favor, and only upon a clear preponderance of the evidence that the acts charged have been done, and were prompted by improper motives, should disciplinary action be taken. The privilege—and it is a privilege, not a right—to practice his profession cannot be lost to the practitioner upon slight evidence."

In our review of the record in the light of this contention, ***we narrow and limit our consideration and conclusions to those findings concerning utterances*** made by respondent during the week in question, with respect to the city officials, the prosecuting attorney, the quo warranto and contempt proceedings, and the superior court judge before whom the latter proceedings were heard.

An epitome of the particular utterances involved is found in the following findings of fact entered by the hearing panel and adopted by the board:

"... Among such statements was a statement to the effect that the prosecuting attorney of King County 'had no respect for his oath to uphold the law. That's been his attitude since his election. He could have filed *quo warranto* some time ago but he thought I would belly-up.' He referred to the *quo warranto* proceeding as a 'Gestapo tactic. We better send for Fidel Castro.'

He stated the appointment of Towne as his replacement as traffic judge was a silly action by the mayor, and that the mayor and city council acted like a bunch of nincompoops. He also stated that Prosecuting Attorney Carroll 'had suffered a political setback and was trying to get back in this way.' Referring to the contempt proceedings, he said, 'It's either criminal contempt or contempt dreamed up by Judge Shorett. This is judicial tyranny.' " Finding of fact No. 4, Re third and fourth items of the amended formal complaint.

"In the presence of members of the press, respondent referred to Judge Shorett's temporary injunction, saying, 'No, we won't obey the order.'

"From his bench in traffic court, respondent said, 'Judge Shorett is going to issue a restraining order and I'm not going to honor it.'

"At a conference in his office in the presence of newspaper reporters, respondent said he had no respect for Shorett or his restraining order, and he did not intend to comply with it.

"Respondent stated, in effect, with reference to Judge Shorett, 'He's no dumbbell but I have no respect for him when he ignores law and order; that boy is smart but I didn't fall into the trap.' He further said, 'I won't make bail for fear Shorett would forfeit it.' " Findings of fact Nos. 1, 2, 3, and 4, Re fifth item of the amended formal complaint.

"Respondent made statements from the bench that the action of the city council and mayor was silly; that because they had acted like a bunch of nincompoops was not reason why he should just sit there and dismiss cases. He remarked about the absence of the police officers and city attorney and said it was not right for officers to write citations and then not prosecute them; that perhaps he would take away the right of police officers to write citations. He referred to the temporary in-

junction issued out of the Superior Court and said he would not obey it; that they could not do that to him and he would be on the bench until the end of his term. . . . " Finding of fact No. 2, Re ninth item of the amended formal complaint.

The hearing panel and board further found, **in light of the circumstances under which the statements were made,** that (a) the statements received widespread publication; (b) respondent knew, **or** should have known, the statements would receive such publication; and (c) the statements were of a derogatory, inflammatory, and offensive nature.

We are thoroughly convinced from our examination of the record that the foregoing findings meet the test laid down in *In re Little, supra.* They are supported by a clear preponderance of the evidence. We will not disturb them.

From the foregoing findings of fact, the hearing panel and board concluded that respondent's course or conduct constituted a violation of Rule for Discipline of Attorneys 1 C, J, and M, and Canon of Professional Ethics 29, RCW Vol. 0. By his third contention, respondent challenges such conclusions, **basically asserting** that the course of conduct ascribed by these findings **does not** demonstrate his unfitness to practice law.

In support of this contention, respondent argues that, **under the circumstances prevailing** at the time in question, the statements he made (a) **correctly reflected his feelings** at the time; (b) **constituted justifiable criticism** of the officials toward whom they were directed; and (c) were not intended by him to reflect upon the judiciary or the legal profession.

[6] We cannot agree with respondent's contention or his arguments in support thereof. We have no serious quarrel with the right of **any citizen** to criticize the actions of public officials, including judges, **under ap-**

propriate circumstances. Respondent, however, was not acting in his capacity as a private citizen. He was an attorney, subject to the provisions of his oath as an attorney and to the Canons of Professional Ethics. He was purporting to act in a public office which he had forfeited by operation of law. He made the statements attributed to him **under notorious circumstances**—circumstances which he himself had helped to generate and create. He made them under **circumstances which invited publication,** and the statements were in fact **widely publicized.** The statements were defiant, derogatory, inflammatory, and wholly unbecoming the dignity of any responsible member of the legal profession. In part at least, the statements were directed toward and directly reflected upon impending and pending litigation, the superior court, and a judge of the superior court. The statements were neither warranted nor justified. And **whether intended by respondent or not, the statements and accompanying notoriety cast scorn and dishonor upon the judicial process, the courts, and the legal profession.** [There is no finding concerning petitioner's character.]

We are satisfied that respondent's statements, made under the circumstances here present, constituted a violation of his oath as an attorney, violated Canons of Professional Ethics 1 and 20, RCW Vol. 0, as well as Canon 29, and demonstrated his unfitness to practice law. Such conduct merits disbarment. See *In re Sherman, supra.* [In other words, free speech merits disbarment.]

In the light of our conclusions just stated, we do not reach or decide the issues raised by the remaining charge of misconduct relating to respondent's official and unofficial conduct concerning Mrs. Betty Adams, the findings and conclusions in respect thereto, and respondent's challenge thereof.

It is ordered that respondent be, and he hereby is, disbarred from the practice of law in the state of Washington and that his name be stricken from the roll of attorneys.

OTT, C. J., DONWORTH, FINLEY, WEAVER, and HALE, JJ., concur.

HILL, J., concurs in the result.

HUNTER, J. (dissenting in part and concurring in the result)—The remarks of the respondent directed to the city officials of Seattle, the prosecuting attorney, and the superior court judge of King County are inexcusable. I believe, however, that this conduct does not in itself justify disbarment.

The respondent was not acting solely in the capacity of an attorney and officer of the court. He was also in the status of a litigant against whom process had been directed in a court proceeding. *I am satisfied from the record that the respondent believed his rights as an individual and as a duly elected municipal court judge were being violated, that the city officials of Seattle and the Superior Court of King County were exceeding their jurisdictions, and that the court order obtained by the prosecuting attorney ousting the respondent from office was void and of no effect.* The order of ouster was obtained after his conviction of a felonious offense and pending his appeal to this court. (The judgment of conviction was later reversed and a new trial was granted by this court. *State v. Simmons*, 59 Wn. (2d) 381, 368 P.(2d) 378.) The order entered in the quo warranto proceedings was based on RCW 9.92.120:

"The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his office, and shall disqualify him from ever afterward holding any public office in this state."

It was the respondent's contention that the above statutory provision for forfeiture of his office could not become effective until the final disposition of his appeal. Although subsequent events proved that the respondent was wrong, they also established there was room for an honest difference of opinion as to his belief that the ouster order was invalid. In *State ex rel. Zempel v. Twitchell*, 59 Wn.(2d) 419, 367 P.(2d) 985, decided in January, 1962, two dissenting members of this court were of the opinion that such an ouster order issued against a public officer would not be effective during the pendency of an appeal from his conviction, as it would constitute a denial of such officer's constitutional guarantee of right of review by this court.

At the time of the utterances by the respondent, for which the majority have disbarred him, there was room for him to believe that the municipal officers of Seattle and the Superior Court of King County acted without authority in vacating his office and ousting him from his position pending his appeal to the Supreme Court of this state.

In my opinion, these facts are mitigating circumstances that should be considered by this court in the imposition of punishment for the utterances respondent directed toward the municipal officers of Seattle, the prosecuting attorney, and the superior court judge of King County at the time in question.

In view of these mitigating circumstances, I believe six months' suspension from the practice of the law would be sufficient punishment to impose upon the respondent for such conduct considered independently of the other charges against the respondent.

The majority do not reach the consideration of respondent's conduct concerning Mrs. Betty Adams. The impropriety of the respondent's conduct in this regard, as a lawyer and a municipal court judge, is more seri-

ous. The out-of-court adjustment of the traffic ticket when considered with his subsequent conduct with Mrs. Adams, although it may have been short of the commission of a felony, demonstrated dishonesty and his unfitness to practice law. It is this misconduct that would justify the respondent's disbarment.

ROSELLINI, J., concurs with HUNTER, J.

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In the Supreme Court of the United States

OCTOBER TERM, 1964

WM. H. SIMMONS, *Petitioner*

v.

THE STATE OF WASHINGTON, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE
WASHINGTON STATE SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

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OPINIONS BELOW

The Findings of Fact and Conclusions of Law of the hearing panel in this matter (R. 0277-0292) are set forth in Appendix B; the report of the Board of Governors to the Washington State Supreme Court (R. 0293-0311) is set forth in Appendix C; and the opinion of the Washington State Supreme Court, *In the Matter of the Disciplinary Proceedings against William H. Simmons, an Attorney at Law,*

65 Wn.(2d) 69 (1964) (R. 0314-0332), is set forth in Appendix A.

QUESTION PRESENTED

Whether certiorari should be granted where Federal Constitutional questions were not raised in disciplinary proceedings against an attorney, either before the hearing panel, the Board of Governors of the Washington State Bar Association, or the Washington State Supreme Court, and where the hearing panel's findings of fact and conclusions of law, the report of the Board of Governors, and the Washington State Supreme Court's opinion do not mention, discuss or decide a Federal Constitutional question.

ARGUMENT

This is a controversy turning on two questions of Washington law, neither of which involves any issue arising under the Federal Constitution. Indeed, no Federal Constitutional question was presented at any stage of the proceedings below, and none was decided by the Supreme Court of Washington.

1. The first question is whether it was error to deny petitioner's request for answers to interrogatories submitted prior to hearing. The Washington court in its opinion (Appendix A) did not reach the question of whether petitioner was entitled to such answers "as a matter of procedural process" inasmuch as petitioner could show no prejudice by his not receiving answers.

The decision below is correct. No prejudice has been pointed to. The hearing panel stated (Appendix B) that petitioner did not call the failure to respond to the interrogatories and demand for answer to either the hearing panel's attention or that of the Board of Governors of the Washington State Bar Association prior to the hearing. The

Washington Supreme Court examined the interrogatories, the pre-hearing stipulation and the evidence adduced at the hearing in concluding that no prejudice was shown. Moreover, no request for a continuance was made at the conclusion of the hearing, nor at any time during it, to meet either the evidence adduced or the charges to which the interrogatories were addressed. Even now, we are not shown in any way how petitioner was prejudiced.

Beyond the failure to show prejudice, it should be pointed out that the Rules for Discipline of Attorneys, RCW Vol. 0, do not directly or indirectly provide for or adopt pre-trial discovery procedures allowed by the Rules of Pleading, Practice and Procedure, RCW Vol. 0, for such are applicable only to Superior Court actions. The Rules for Discipline of Attorneys, under which the proceedings below were instituted, were adopted by the Washington Supreme Court subsequent to that court's adoption of its Rules of Pleading, Practice and Procedure. Respondent's reliance on *Brotsky v. State Bar*, 368 P.2d 697 (1962) in connection with the failure to answer interrogatories, is misplaced. The California court in that case held its pretrial discovery statutes (Cal. Code Civ. Pro. §§ 2016-2035) applicable in a disciplinary proceeding (deemed an action in court) because they were enacted subsequent to the State Bar's adoption of its Rules of Professional Conduct of the State Bar of California (Cal. Bus. and Prof. Code) and were held to be "rules of procedure for all courts," *Brotsky v. State Bar, supra,* at 704. Such statutory procedures were therefore applicable to disciplinary proceedings in California.

2. The second question is whether the evidence was sufficient to support the findings of fact. This presents no Federal Constitutional issue. Petitioner does not contend that it does.

3. Inasmuch as no substantial Federal question is involved in this case, it seems almost superfluous to point out that the questions now contained in the petition were neither presented below nor decided by the Supreme Court of Washington. See *New York Central & H. R. Co. v. New York*, 186 U. S. 269, 273 (1902).

The petition, at page 5, alleges a denial of due process (even here petitioner does not allege a Federal Constitutional issue), but no part of the record is referred to where such an allegation was either raised below or raised below as a Federal Constitutional question. The opinion, the report of the Board of Governors, and the Findings of Fact and Conclusions of Law of the hearing panel below demonstrate on their face that no Federal issue was considered and that the Washington State Supreme Court did not decide a Federal question. See *Beck v. Washington*, 369 U. S. 541, 549-556 (1962). At best, the portions of the record referred to by petitioner may have raised a claim under Article I, § 3, of the Washington Constitution, RCW Vol. 0. However, a claim of denial of due process without reference, directly or by necessary implication, to the Federal Constitution, must be construed to relate to the due process clause of the state constitution in a state proceeding. *Bowe v. Scott*, 233 U. S. 658 (1914).

Petitioner purports to find an abridgment of free speech under the First and Fourteenth Amendments to the Federal Constitution arising from the Findings of Fact entered by the hearing panel. However, no portion of the record is pointed to where such an issue was raised or decided below. See Rule 23 1(f), Revised Rules of the Supreme Court of the United States.

There is no showing that the silence of the Washington State Supreme Court on any purported Federal Constitutional issue is due to anything but the procedural deficiency

of failing to raise any such issue. See *Mutual Life Ins. Co. v. McGrew*, 188 U. S. 291, 309 (1903); *Bailey v. Anderson*, 326 U. S. 203, 206-207 (1945); and *Beck v. Washington, supra.*

CONCLUSION

Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted.
RICHARD F. BROZ and
JEREMIAH M. LONG
Attorneys for Respondent

Appendix A

OPINION OF THE
SUPREME COURT OF THE STATE OF WASHINGTON

[C.D. 4026. En Banc. October 27, 1964.]

In the Matter of the Disciplinary Proceedings Against WILLIAM H. SIMMONS, *an Attorney at Law.*

Proceedings filed in the Supreme Court July 2, 1963, for the discipline of an attorney. *Judgment of disbarment.*

Jeremiah M. Long, for Board of Governors.

Philip McIntosh and *Wm. H. Simmons*, for respondent.

HAMILTON, J.—On September 10, 1952, respondent was admitted to the practice of law. He thereupon commenced practice in Seattle, King County, Washington. In November, 1958, he was elected to and assumed the full-time position of Judge of the Municipal Court of the City of Seattle, Department No. 2. About noon, on July 14, 1960, a Mrs. Betty Adams contacted respondent, in his official capacity, relative to a traffic citation. After some discussion, respondent endorsed the citation as a "warning." Mrs. Adams and he then went to a restaurant and cocktail lounge. Following several cocktails and effectionate expressions, they went to an apartment, where disagreement or misunderstanding as to their respective intentions developed. They left the apartment, respondent returning to his office and Mrs. Adams to downtown Seattle. As an outgrowth of this incident, respondent was charged with a felony—assault with intent to commit rape. Respondent pleaded not guilty. A jury trial ensued resulting in a verdict of guilty.

On February 21, 1961, judgment was entered and respondent was sentenced to serve 10 years in the penitentiary, execution of which sentence was suspended upon

condition that respondent resign his position as municipal court judge. Respondent appealed the conviction and continued in his judicial office.

On March 6, 1961, the council of the city of Seattle passed an ordinance declaring vacant the office of Judge of the Municipal Court, Department No. 2, by virtue of respondent's conviction of the crime charged, and requested the Presecuting Attorney of King County to institute ouster proceedings. The Mayor of the City of Seattle appointed a successor and advised respondent of the ordinance and his action. Respondent refused to honor the ordinance or recognize a successor to his office. He continued to hold court. On the evening of March 6th, the official records were removed from the court offices.

The prosecuting attorney, on March 7, 1961, served and filed an information in quo warranto together with a 20-day summons. At the same time, the prosecuting attorney applied for an order to restrain respondent from acting as judge of the municipal court during the pendency of the quo warranto proceeding. Respondent was directed to appear in superior court on March 8, 1961, and show cause why he should not be so restrained. Respondent continued to hold court despite the absence of official records, clerical personnel, and the city attorney. He dismissed a number of cases for lack of prosecution due to the absence of counsel for the city. He spent the night of March 7th in the chambers adjacent to the courtroom. On March 8th respondent removed a notice of continuance of pending cases posted to the courtroom door by his successor and dismissed additional cases for lack of prosecution.

On the morning of March 8, 1961, hearing was commenced in superior court upon the order to show cause and respondent's challenge to the jurisdiction of the superior court. Respondent was personally present for a portion of

the hearing in the afternoon, and was otherwise at all times represented by counsel.

The superior court, on the morning of March 9, 1961, orally announced its intention and thereafter formally entered a temporary injunction ordering respondent to forthwith vacate the offices of and to cease and desist acting as Judge of the Municipal Court, Department 2, pending further order of the court. The record before us in this proceeding is not clear as to whether or not respondent was personally present in superior court at the time the court orally announced its intention to enter the temporary injunction. In any event, respondent returned to the offices of the Municipal Court, Department No. 2, undertook the performance of some functions in connection therewith, and, at 10:36 a.m., was served with a certified copy of the temporary injunction. At 11:45 a.m., respondent departed the offices. Thereafter, a bench warrant was issued out of superior court directing the sheriff to apprehend and bring respondent before the court to show cause why he should not be adjudged in contempt for his failure or refusal to abide by the temporary injunction. The bench warrant fixed bail at $500 and was returnable forthwith, or at 9 a.m., March 10, 1961, if served after 4 p.m. The warrant was served after 4 p.m., and respondent elected not to post bail. As a result, he spent the night in jail. On March 10, 1961, respondent was adjudged in contempt. Respondent did not thereafter seek to physically reclaim or exercise any functions of the office of municipal court judge. He did, however, continue to maintain his claim thereto and to challenge the legality of his removal and of the quo warranto proceedings.

On April 20, 1961, following a contested motion for summary judgment in the quo warranto proceedings, formal judgment of ouster was entered. Respondent appealed from

this judgment. This court subsequently affirmed the judgment. *State ex rel. Carroll v. Simmons*, 61 Wn (2d) 146, 377 P. (2d) 421.

As might be expected, widespread publicity accompanied the foregoing events. Extensive coverage was afforded by all news media. Editorials appeared relating to respondent's activities and the responsibility of the bench and bar. A number of impolite statements, derogatory of the city officials, the prosecuting attorney, and the action of the superior court, were publicly attributed to respondent.

On July 20, 1961, the Washington State Bar Association initiated disciplinary proceedings by serving a formal complaint, which contained two items of alleged misconduct: (a) The conviction of a crime involving moral turpitude, and (b) the filing of a false affidavit in connection with the appeal of the conviction. Respondent denied the charges: Hearing was deferred pending disposition of respondent's appeal in the criminal proceedings. On January 12, 1962, respondent's conviction was reversed by this court and a new trial granted. *State v. Simmons*, 59 Wn. (2d) 381, 368 P. (2d) 378. The state did not prosecute further.

On June 26, 1962, the bar association served respondent with an amended formal complaint containing nine items of alleged miscondent. Respondent in most part denied the charges and, on August 10, 1962, served interrogatories, going to each of the charges, upon counsel for the bar association. On September 11, 1962, the amended complaint came on for hearing before a hearing panel consisting of one member of the Board of Governors of the Washington State Bar Association, as chairman, and two members of the bar of King County. Respondent's request for answers to his interrogatories was denied, and the

hearing proceeded. Respondent was personally presented and represented by counsel at all times during the hearing.

On October 3, 1962, the hearing panel filed its findings, conclusions, and recommendations. The hearing panel dismissed four items of alleged misconduct, found respondent had committed five of the items of alleged misconduct, and recommended disbarment. Respondent filed a statement in opposition to the findings, conclusions, and recommendation of the panel. The board of governors, with the exception of the member of the board serving as chairman of the hearing panel, thereafter reviewed the record of the proceedings and, on June 21, 1963, approved and adopted the findings, conclusions, and recommendation of the hearing panel. The proceedings were certified to this court for review and final disposition.

Four of the charges of misconduct, which the hearing panel and the board of governors found respondent had committed, essentially relate to public and published statements made by respondent, particularly concerning the events transpiring during the week beginning on March 6, 1961. In connection with these charges, the hearing panel and board of governors found that respondent did make defiant statements of a derogatory, inflammatory, and offensive nature concerning the actions and attitudes of the city officials, the prosecuting attorney, and the superior court judge hearing the quo warranto proceedings, when he knew, or should have known, that such statements would receive widespread publication. The hearing panel and the board of governors took judicial notice, evidentially supported by photostatic copies of numerous newspaper articles, of the notoriety attending the statements and concluded that respondent's conduct and reflected attitude constituted, in varying degrees, a viola-

tion of Rule for Discipline of Attorneys 1 C, J, and M,[1] and of Canon of Professional Ethics 29,[2] RCW Vol. 0.

The remaining charge of misconduct related to respondent's official and unofficial conduct concerning Mrs. Betty Adams on July 14, 1961. The hearing panel and the board of governors found and concluded, upon this charge, that respondent's conduct violated Rule for Discipline of Attorneys - A,[3] C, J, and M, and Canon of Professional Ethics 29.

---

1. "An attorney at law may be censured, reprimanded, suspended, or disbarred for any of the following causes, hereinafter sometimes referred to as violations of the rules of professional conduct:
   "...
   "C. Violation of his oath or duties as an attorney.
   "...
   "J. Violation of the canons of ethics of the profession adopted by the supreme court of the state of Washington.
   "...
   "M. A course of conduct demonstrating unfitness to practice law." Rule for Discipline of Attorneys 1 C, J, M, RCW Vol. 0.

2. "... He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice." Canon of Professional Ethics 29, RCW Vol. 0.

3. "An attorney at law may be censured, reprimanded, suspended, or disbarred for any of the following causes, hereinfter sometimes referred to as violations of the rules of professional conduct:
   "A. The commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his relations as an attorney, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to diciplinary action. Upon such conviction, however, the judgment and sentence shall be conclusive evidence, at any ensuing disciplinary hearing, of the guilt of the respondent attorney of the crime described in the indictment or information, the statute upon which it is based, and the judgment and sentence. A disciplinary hearing as provided in Rule 7 of these rules shall be had to determine only whether moral turpitude was in fact an element of the crime committed by the respondent attorney."
   Rule for Discipline of Attorneys 1 A, RCW Vol. 0.

Upon review before this court, respondent challenges the findings, conclusions, and recommendation of the hearing panel and board upon four grounds. (1) Denial of his request for answers to his interrogatories; (2) failure or insufficiency of the proof in connection with the four charges relating to respondent's public and published statements; (3) failure to establish a course of conduct demonstrating respondent's unfitness to practice law; and (4) failure to establish moral turpitude in connection with the charge relating to respondent's conduct concerning Mrs. Betty Adams.

[1-3] Before approaching a consideration of the findings, conclusions, and recommendation and respondent's challenges thereto, we make the following observations:

(1) A disciplinary proceeding is basically an inquiry into the fitness of a member of the bar, in the light of his conduct to continue in the practice of the law. It is a special proceeding, neither civil nor criminal, incident to the inherent power of the court to control its officers. It is *sui generis* . *In re Sherman*, 58 Wn. (2d) 1, 354 P. (2d) 888; *In re Little*, 40 Wn. (2d) 421, 244 P. (2d) 255.

(2) Admission to the practice of law before the courts of record of this state is a prerequisite to holding the office of judge of the Municipal Court of the City of Seattle (RCW 35.20.170), and a judge thereof, although prohibited by statute (RCW 35.20.170) from the practice of law during his tenure, remains a member of the bar of this state (RCW 2.48.021).

(3) The Municipal Court of the City of Seattle is not a court of record, and the office of judge of such court is subject to forfeiture. *State ex rel. Carroll v. Simmons, supra.*

(4) By the terms of RCW 9.92.120 and 42.12.010 re-

sponent's conviction, on February 21, 1961, of the felony with which he was charged carried with it the *immediate forfeiture* of his office as judge of the Municipal Court of the City of Seattle, and *then created a vacancy* in that office. Quo warranto proceedings were merely ancillary to and in aid of the forfeiture, not a condition precedent thereto. Appeal from the conviction did not stay the forfeiture, and appellate reversal of the conviction did not reinstate respondent. *State ex rel. Carroll v. Simmons, supra; State ex rel. Zempel v. Twitchell*, 59 Wn. (2d) 419, 367 P. (2d) 985; *State ex rel. Austin v. Superior Court*, 6 Wn. (2d) 61, 106 P. (2d) 1077; *State ex rel. Knabb v. Frater*, 198 Wash. 675, 89 P. (2d) 1046; *State ex rel. Guthrie v. Chapman*, 187 Wash. 327, 60 P. (2d) 245, 106 A.L.R. 640.

Against the backdrop of these observations, we turn to the issues presented.

In support of his first challenge to the findings, conclusions and recommendations in question, respondent contends that he was entitled, as a matter of right, to receive answers from the Washington State Bar Association to his written interrogatories. In support of this contention, respondent relies upon the case of *Brotsky v. State Bar of California*, 57 Cal. (2d) 287, 19 Cal. Rptr. 153, 368 P. (2) 697, 94 A.L.R. (2d) 1310, wherein the Supreme Court of the State of California held that the pretrial discovery statutes of that state were applicable in toto to a disciplinary proceeding initiated under the California State Bar Act.

In response to this contention, counsel for the bar association asserts: (a) The Rules for Discipline of Attorneys, RCW Vol. 0, do not, directly or indirectly, provide for or adopt the pretrial discovery procedure allowed by the Rules of Pleading, Practice and Procedure 26, 30, 33, and 34, RCW Vol. 0; (b) the case of *Brotsky v. State Bar of*

California, supra, is distinguishable upon the facts and the law; and (c) the respondent was not, in any event, prejudiced by the denial because a prehearing stipulation as to certain evidentiary matters, entered into between counsel for the bar association and respondent, was predicated upon the written interrogatories, and, further the evidence ultimately adduced at the hearing was well within the knowledge of respondent.

[4] We do not reach the interesting question as to whether respondent was entitled, as a matter of procedural process, to demand and receive answers to his prehearing written interrogatories. Respondent does not point to any prejudice attributable to the failure of the bar association to supply the answers requested. And, after careful examination of the undismissed charges, the interrogatories directed thereto, the prehearing stipulation, and the evidence adduced at the hearing, we find no prejudice. We are satisfied none of the evidence introduced by the bar association, in support of the pertinent charges, came as any surprise to respondent. Accordingly, we conclude that respondent's challenge upon this score is without merit.

[5] Respondent's second contention challenges the sufficiency of the evidence to support the findings of fact, entered by the hearing panel and adopted by the board of governors, in connection with the four charges relating to respondent's conduct and public utterances during the week commencing March 6, 1961. In support of this contention, respondent cites the case of *In re Little, supra,* a disciplinary proceedings, wherein we stated concerning the burden of proof (p. 430):

". . . Every doubt should be resolved in his [the attorney's] favor, and only upon a clear preponderance of the evidence that the acts charged have been done, and were prompted by improper motives, should disciplinary

action be taken. The privilege—and it is a privilege, not a right—to practice his profession cannot be lost to the practitioner upon slight evidence."

In our review of the record in the light of this contention, we narrow and limit our considerations and conclusions to those findings concerning utterances made by respondent during the week in question, with respect to the city officials, the prosecuting attorney, the quo warranto and contempt proceedings, and the superior court judge before whom the latter proceedings were heard.

An epitome of the particular utterances involved is found in the following findings of fact entered by the hearing panel and adopted by the board:

". . . . Among such statements was a statement to the effect that the prosecuting attorney of King County 'had no respect for his oath to uphold the law. That's been his attitude since his election. He could have filed *quo warranto* some time ago but he thought I would belly-up! He referred to the *quo warranto* proceeding as a 'Gestapo tactic. We better send fo Fidel Castro.' He stated the appointment of Towne as his replacement as traffic judge was a silly action by the mayor, and that the mayor and city council acted like a bunch of nincompoops. He also stated that Prosecuting Attorney Carroll 'had suffered a political setback and was trying to get back in this way.' Referring to the contempt proceedings, he said, 'It's either criminal contempt or contempt dreamed up by Judge Shorett. This is judicial tyranny.'" Finding of fact No. 4, Re third and fourth items of the amended formal complaint.

"In the presence of members of the press, respondent referred to Judge Shorett's temporary injunction, saying 'No, we won't obey the order.'

"From his bench in traffic court, respondent said, 'Judge

Shorett is going to issue a restraining order and I'm not going to honor it.'

"At a conference in his office in the presence of newspaper reporters, respondent said he had no respect for Shorett or his restraining order, and he did not intend to comply with it.

"Respondent stated, in effect, with reference to Judge Shorett, 'He's no dumbbell but I have no respect for him when he ignores law and order; that boy is smart but I didn't fall into the trap.' He further said, 'I won't make bail for fear Shorett would forfeit it.'" Findings of fact Nos. 1, 2, 3, and 4, Re fifth item of the amended formal complaint.

"Respondent made statements from the bench that the action of the city council and mayor was silly; that because they had acted like a bunch of nincompoops was no reason why he should just sit there and dismiss cases. He remarked about the absence of the police officers and city attorney and said it was not right for officers to write citations and then not prosecute them; that perhaps he would take away the right of police officers to write citations. He referred to the temporary injunction issued out of the Superior Court and said he would not obey; that they could not do that to him and he would be on the bench until the end of his term. . . ." Finding of fact No. 2, Re ninth item of the amended formal complaint.

The hearing panel and board further found, in light of the circumstances under which the statements were made, that (a) the statements received widespread publication; (b) respondent knew, or should have known, the statements would receive such publication; and (c) the statements were of a derogatory, inflammatory, and offensive nature.

We are thoroughly convinced from our examination of the record that the foregoing findings meet the test laid down in *In re Little, supra.* They are supported by a clear preponderance of the evidence. We will not disturb them.

From the foregoing findings of fact, the hearing panel and board concluded that respondent's course or conduct constituted a violation of Rule for Discipline of Attorneys 1 C, J, and M, and Cannon of Professional Ethics 29, RCW Vol. 0. By his third contention, respondent challenges such conclusions, basically asserting that the course of conduct ascribed by these findings does not demonstrate his unfitness to practice law.

In support of this contention, respondent argues that, under the circumstances prevailing at the time in question, the statements he made (a) correctly reflected his feelings at the time; (b) constituted justifiable criticism of the officials toward whom they were directed; and (c) were not intended by him to reflect upon the judiciary or the legal profession.

[6] We cannot agree with respondent's contention or his arguments in support thereof. We have no serious quarrel with the right of any citizen to criticize the actions of public officials, including judges, under appropriate circumstances. Respondent, however, was not acting in his capacity as a private citizen. He was an attorney, subject to the provisions of his oath as an attorney and to the Canons of Professional Ethics. He was purporting to act in a public office which he had forfeited by operation of law. He made the statements attributed to him under notorious circumstances—circumstances which he himself had helped to generate and create. He made them under circumstances which invited publication, and the statements were in fact widely publicized. The statements were defiant, derogatory, inflammatory, and wholly unbecoming

the dignity of any responsible member of the legal profession. In part at least, the statements were directed toward and directly reflected upon impending and pending litigation, the superior court, and a judge of the superior court. The statements were neither warranted nor justified. And, whether intended by respondent or not, the statements and accompanying notoriety cast scorn and dishonor upon the judicial process, the courts, and the legal profession.

We are satisfied that respondent's statements, made under the circumstances here present, constituted a violation of his oath as an attorney, violated Canons of Professional Ethics 1 and 20,[4] RCW Vol. 0, as well as Canon 29, and demonstrated his unfitness to practice law. Such conduct merits disbarment. See *In re Sherman, supra.*

In the light of our conclusions just stated, we do not reach or decide the issues raised by the remaining charge of misconduct relating to respondent's official and unofficial conduct concerning Mrs. Betty Adams, the findings and conclusions in respect thereto, and respondent's challenge thereof.

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4. "It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

"Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any *ex parte* statement." Canons of Professional Ethics 1 and 20, RCW Vol. 0.

It is ordered that respondent be, and he hereby is, disbarred from the practice of law in the state of Washington and that his name be stricken from the roll of attorneys.

OTT, C. J., DONWORTH, FINLEY, WEAVER, *and* HALE, *J.*, concur.

HILL, J., concurs in the result.

HUNTER, J. (dissenting in part and concurring in the result)—The remarks of the respondent directed to the city officials of Seattle, the prosecuting attorney, and the superior court judge of King County are inexcusable. I believe, however, that this conduct does not in itself justify disbarment.

The respondent was not acting solely in the capacity of an attorney and officer of the court. He was also in the status of a litigant against whom process had been directed in a court proceeding. I am satisfied from the record that the respondent believed his rights as an individual and as a duly elected municipal court judge were being violated, that the city officials of Seattle and the Superior Court of King County were exceeding their jurisdictions, and that the court order obtained by the prosecuting attorney ousting the respondent from office was void and of no effect. The order of ouster was obtained after his conviction of a felonious offense and pending his appeal to this court. (The judgment of conviction was later reversed and a new trial was granted by this court. *State v. Simmons*, 59 Wn. (2d) 381, 368 P. (2d) 378.) The order entered in the quo warranto proceeding was based on RCW 9.92.120:

"The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his office, and shall disqualify him from ever afterward holding any public office in this state."

It was the respondent's contention that the above statutory provision for foreiture of his office could not become effective until the final disposition of his appeal. Although subsequent events proved that the respondent was wrong, they also established there was room for an honest difference of opinion as to his belief that the ouster order was invalid. In *State ex rel. Zempel v. Twitchell*, 59 Wn. (2d) 419, 367 P. (2d) 985, decided in January, 1962, two dissenting members of this court were of the opinion that such an ouster order issued against a public officer would not be effective during the pendency of an appeal from his conviction, as it would constitute a denial of such officer's constitutional guarantee of right of review by this court.

At the time of the utterances by the respondent, for which the majority have disbarred him, there was room for him to believe that the municipal officers of Seattle and the Superior Court of King County acted without authority in vacating his office and ousting him from his position pending his appeal to the Supreme Court of this state.

In my opinion, these facts are mitigating circumstances that should be considered by this court in the imposition of punishment for the utterances respondent directed toward the municipal officers of Seattle, the prosecuting attorney, and the superior court judge of King County at the time in question.

In view of these mitigating circumstances, I believe six months' suspension from the practice of law would be sufficient punishment to impose upon the respondent for such conduct considered independently of the other charges against the respondent.

The majority do not reach the consideration of respondent's conduct concerning Mrs. Betty Adams. The impro-

priety of the respondent's conduct in this regard, as a lawyer and a municipal court judge, is more serious. The out-of-court adjustment of the traffic ticket when considered with his subsequent conduct with Mrs. Adams, although it may have been short of the commission of a felony, demonstrated dishonesty and his unfitness to practice law. It is this misconduct that would justify the respondent's disbarment.

ROSELLINI, J., concurs with HUNTER, J.

Appendix B

BEFORE THE BOARD OF GOVERNORS
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re WILLIAM H. SIMMONS, An Attorney at Law.	Findings, Conclusions and Recommendation of Hearing Panel.

The hearing in the disciplinary proceedings as to William H. Simmons, an attorney at law, came before a Hearing Panel comprised of Dale McMullen, member of the Board of Governors of the Washington State Bar Association from the Third District, who acted as chairman, and Robert B. Albertson and David C. Hunter, active members of said Bar Association from King County, Washington, on the 10th day of September, 1962, at 9:30 o'clock a.m. at the office of said State Bar Association in the City of Seattle.

Panel member Robert B. Albertson was designated as the member of the panel to act as secretary for the hearing and he performed the services required of him, receiving and endorsing all exhibits offered by the Association and by respondent.

Respondent William H. Simmons appeared in person and was represented by his attorney, Philip R. McIntosh of Seattle, and the Bar Association was represented by its counsel, Jeremiah M. Long of Seattle.

The chairman called the session to order and announced that as respondent had elected to have a public hearing, it would be conducted as such. Respondent thereupon stated that the public hearing had been requested on the original formal complaint but that he did not request and did not want a public hearing on the amended formal complaint.

The hearing was then conducted as a secret hearing, with no one present except the members of the Hearing Panel, Bar counsel, respondent, respondent's counsel, and the court reporter. As each witness was called, he was admitted to the hearing chamber and upon completion of his testimony he departed.

Mr. Long stated he first wanted to offer in evidence and discuss a stipulation entered into by respondent and respondent's counsel and himself in clarification of the formal amended complaint and various issues raised by such complaint and respondent's answer thereto. This stipulation was marked by the clerk as Association Exhibit No. 1, and was later admitted in evidence as an exhibit, with the understanding that by its admission respondent was not waiving his right to have his interrogatories answered. Respondent then stated that he had served a set of interrogatories upon Association counsel and that when they had not been answered, he had served Association counsel with a demand that answers thereto be filed, basing his right to submit such interrogatories under the provisions of Section J, Rule VII, Rules of Discipline of Attorneys. Respondent objected to the hearing proceeding until his interrogatories had been answered. The members of the Hearing Panel, being of the opinion that interrogatories were not permitted under said Rules and in view of the fact that respondent had not called same to the attention of the Hearing Panel or Board of Governors prior to the hearing, respondent's objection was overruled.

FINDINGS OF FACT

Re: Admission to practice law and election as municipal judge.

William H. Simmons was admitted to the practice of law in the State of Washington on the 10th day of September,

1952; that thereafter, he was elected and served as judge of Departmnt No. 2 of the Municipal Court of Stattle from on or about January 1, 1959, until at least on or about March 6, 1961.

Re: First item of amended formal complaint.

I.

By Association Exhibit No. 1 and in his testimony, respondent admitted that he met a Mrs. Betty Adams in the course of his duties as a municipal traffic judge of the City of Seattle. She contacted him regarding a traffic ticket which had been given her by a police officer. He arranged for her to see him at his chambers, and after endorsing her ticket as a warning, took her to lunch at a tavern. In the stipulation (Association Exhibit No. 1), he admitted he arranged a luncheon date with her but during the hearing he objected to the use of the word "arranged". The facts remain that he and she had several drinks at the tavern and then changed their minds about having lunch. Following a conversation, during which affectionate kisses were exchanged, he took her to an apartment for which he had a key. He took her there intending to have sexual intercourse with her, believing the intent was mutual.

II.

To this effect, also, was his testimony in the criminal case which was filed against him in the Superior Court of King County, being Case No. 34733 of that Court, part of which testimony constitutes a portion of Association Exhibit No. 1.

Re: Second item of complaint.

I.

By Association Exhibit No. 1 respondent admitted that.

as charged in Item Two of the amended formal complaint, he was held in contempt of court by Honorable Lloyd Shorett, Judge of the Superior Court for King County, in Cause No. 564360, but respondent denied that he was actually in contempt, and asserted that Judge Shorett's order was void.

II.

The city council of Seattle enacted City Ordinance No. 90050 (Association Exhibit No. 3) on March 3, 1961, by which the council declared vacant the traffic judge's position previously held by respondent, the ordinance being a result of the conviction of respondent of a felony in said Cause No. 34733 of King County Superior Court. By the ordinance, the mayor of Seattle was authorized and directed to fill the vacancy by appointment, subject to approval by the council, and the King County prosecuting attorney was requested to institute the necessary legal proceedings to enforce the forfeiture of such office should respondent refuse to surrender the office.

III.

The city mayor sent respondent a letter informing respondent of the ordinance and notifying respondent that he had appointed Vernon W. Towne to the traffic judge's position and demanding that respondent surrender the office by 9:30 a.m., March 7, 1961.

IV.

Respondent continued to hold court sessions in the court room of Department No. 2, and when no appearance was made by attorneys representing the city, many cases were dismissed for want of prosecution. Respondent testified no important case was dismissed except one or two which had previously been continued upon application by the

city, and no evidence was introduced to controvert respondent's testimony.

V.

On March 7, 1961, the King County prosecuting attorney filed an information in *quo warranto* in King County Superior Court, as Cause No. 564360 (Association Exhibit No. 2). Honorable Lloyd Shorett, Judge of the King County Superior Court, issued a temporary restraining order in said cause, ordering respondent to forthwith cease and desist in acting as judge of said traffic court and to absent himself from the court room,, chambers and other offices of Department No. 2, Municipal Court of the City of Seattle, such order to remain in effect until determination of the issues raised by the *quo warranto*.

VI.

An "order continuing all cases for resetting" was signed by Judge Towne under date of March 8, 1961, and a copy thereof affixed to the entrance door of the court of the municipal traffic judge, Department No. 2. This notice was removed by respondent, who asserts the ordinance was unconstitutional in the first place, and, in the second place, could not take effect before thirty days subsequent to its enactment as it contained no emergency clause.

VII.

Thereafter, a bench warrant was issued out of said Superior Court cause, resulting in the arrest of respondent. Following a hearing, Judge Shorett made and entered findings of fact and conclusions of law to the effect that respondent did not intend to obey the temporary injunction; that following the announcement in open court on March 9, 1961, of the court's intention to issue the temporary injunction, but prior to the time of its formal entry, respon-

dent returned to the bench of the municipal traffic court and dismissed one case and continued all other cases until March 13, 1961, and that respondent was served with a copy of the temporary injunction at 10:36 a.m.

VIII.

Respondent testified that he was not in Judge Shorett's court room at the time Judge Shorett made his announcement and that he was not served with the temporary injunction until after he has disposed of the one case: that after being served with a copy of the temporary injunction he remained in the rooms of the traffic judge only long enough to collect his own personal effects, such as books, papers and other personal items.

IX.

Neither did Judge Shorett's findings nor the evidence introduced by the Association during the hearing show that respondent performed any official act subsequent to being served with the temporary injunction, nor do Judge Shorett's findings show that respondent was present in court at the time the judge announced that the temporary injunction would issue.

X.

We find that the allegation in the amended formal complaint that respondent was held to be in contempt by Judge Shorett was sustained. We cannot find from the evidence presented to us that respondent was actually in contempt.

Re: Third and Fourth Items of Amended Formal Complaint.

Items Three and Four of the amended formal complaint are so closely related we have consolidated them for consideration.

I.

By the first paragraph of each of these items of the amended formal complaint, respondent was charged with having made numerous statements and comments concerning litigation then pending in the Superior Court for King County and the Supreme Court of the State of Washington and concerning anticipated litigation in said Superior Court, many of such statements being of a derogatory, inflammatory and offensive nature and in reference to the prosecuting attorney for King County, the mayor of the City of Seattle and the Seattle city council; that such statements and comments were made to newspaper reporters or under such circumstances that respondent knew or should have known they were being heard by reporters and would be and were being widely reported through Seattle newspapers.

II.

Respondent admitted making many of the statements attributed to him and asserted they were justified under the circumstances and under his opinion of applicable law. In many instances, he testified that "I can't recall making such statement but that was how I felt", or, "that was my feeling". He further testified many of the statements were made by him while he was in his chambers and were not made for publicity purposes or for the benefit of the newspaper reporters.

III.

Respondent admitted he knew his statements were being overheard because he "read them the next day in the papers." We are forced to find from all of the evidence introduced during the hearing that he made the statements knowing they would be widely publicized.

IV.

Many statements made by respondent were of a derogatory, inflammatory and offensive nature in reference to public officials of Seattle and King County, and respondent knew they would be widely publicized. Among such statements was a statement to the effect that the prosecuting attorney of King County "had no respect for his oath to uphold the law. That's been his attitude since his election. He could have filed *quo warranto* some time ago but he thought I would belly-up." He referred to the *quo warranto* proceeding as a "Gestapo tactic. We better send for Fidel Castro." He stated the appointment of Towne as his replacement as traffic judge was a silly action by the mayor, and that the mayor and city council acted like a bunch of nincompoops. He also stated that Prosecuting Attorney Carroll "had suffered a political setback and was trying to get back in this way." Referring to the contempt proceedings, he said, "It's either criminal contempt or contempt dreamed up by Judge Shorett. This is judicial tyranny."

Re: Fifth item of amended formal complaint.

I.

In the presence of members of the press, respondent referred to Judge Shorett's temporary injunction, saying, "No, we won't obey the order."

II.

From his bench in traffic court, respondent said, "Judge Shorett is going to issue a restraining order and I'm not going to honor it."

III.

At a conference in his office in the presence of newspaper reqorters, responder.t said that he had no respect for

Shorett or his restraining order, and he did not intend to comply with it.

IV.

Respondent stated, in effect, with reference to Judge Shorett, "He's no dumbell but I have no respect for him when he ignores law and order; that boy is smart but I didn't fall into the trap." He further said, "I won't make bail for fear Shorett would forfeit it."

Re: Item six of amended formal complaint.

I.

Bar counsel admitted that he was unable to secure the attendance of the witnesses by which he had expected to substantiate this charge, and introduced a statement signed by a doctor to the effect that the woman named in this item of the complaint was physically unable to attend the hearing to testify.

Re: Item seven of amended formal complaint.

1.

By Paragraph VI of Association Exhibit No. 1, respondent admitted that during the period of March 6 through March 10, 1961, while acting or purporting to act as municipal judge he dismissed approximately one hundred traffic complaints then pending in said traffic court.

II.

Respondent denied his action was wrongful, arbitrary or capricious. He contended the order forfeiting his right to the office of traffic judge was void; that the cases were ready for trial, and that the defendants were in court, some of them with their attorneys and witnesses, seeking disposition of their cases, and when the city representatives failed

to appear to prosecute the action he acted properly in dismissing the cases.

Re: Item eight of the amended formal complaint.

I.

In this item of the complaint, as amended by Paragraph VII of Association Exhibit No. 1, it is charged that respondent admitted movie cameras into the municipal traffic court while he was holding or purporting to hold court therein and permitted the photographing of the proceedings then being conducted.

II.

The evidence showed that respondent had restrained one man from entering the room while he was attempting to take pictures of the proceedings. A very few of those attending the proceedings carried a camera; that the proceedings were not disturbed and the evidence introduced under this item of the complaint showed no substantial change occurred in the number of movie or ordinary cameras present, and we find that respondent controlled or limited the number rather than encouraged or increased their number and presence.

Re: Item nine of the amended formal complaint.

I.

We are not unmindful of the testimony given by the attorney witnesses called by respondent, but we find that the great preponderance of the evidence produced before the Hearing Panel establishes the charges contained in this item of the complaint. During the period from March 7 through March 3, 1961, respondent so conducted himself on the bench that his court room became a place of amusement. There was applause and clapping of hands on oc-

casions of his appearance: calls from people in the audience; and other demonstrations, and people went there for entertainment.

II.

Respondent made statements from the bench that the action of the city council and mayor was silly; that because they had acted like a bunch of nincompoops was no reason why he should just sit there and dismiss cases. He remarked about the absence of the police officers and city attorney and said it was not right for officers to write citations and then not prosecute them; that perhaps he would take away the right of the police officers to write citations. He referred to the temporary injunction issued out of the Superior Court and said he would not obey it; that they could not do that to him and he would be on the bench until the end of his term. He told the crowd in his court room that all records of the cases were gone and calls came from the audience to "dismiss them all, Judge". The crowd cheered and applauded his statements, and a woman called, "Don't let them kill you, Judge".

III.

A disinterested witness testified as to the clapping and stated respondent d nothing to discourage it. He further stated that an effort to have stopped it would have been made in other court rooms.

IV.

The Hearing Panel takes judicial notice of the widespread and notorious publicity given respondent during the months previous to March 10, 1961. Exhibit No. 6, consisting of some hundred odd photo copies of pages of Seattle newspapers admitted under Item Three and Four of the amended formal complaint shows the extent and char-

acter of the publicity accorded respondent during that period.

Based on the facts, as found by the Hearing Panel, the members of the Panel draw and make the following,

CONCLUSIONS

As to Item I of the Complaint

Respondent's conduct, as shown by the facts found by the Hearing Panel under Item I of the amended formal complaint, involved mortl turpitude, was in violation of his oath as an attorney in that he failed to maintain the respect due to courts of justice and judicial officers and violated Canon 29 of the code of ethics, and that he failed to uphold the honor and to maintain the dignity of the profession.

As to Item II of the Complaint

In view of the absence of any testimony or evidence that respondent had knowledge of the issuance of the restraining order by Judge Shorett prior to the time he performed the acts charged against him under this item of the complaint and in view of the condition of the evidence submitted, the Hearing Panel concludes this item of the complaint should be dismissed.

As to Items III and IV of the Complaint

The statements and comments made by respondent, as shown by the facts found under these two items of the complaint, concern litigation then pending in the Superior Court of King County, Washington, the Supreme Court of the State of Washington, or anticipated litigation, and many of them were of a derogatory, inflammatory and offensive nature in reference to the prosecuting attorney for King County, the mayor of the City of Seattle and the Seattle

city council, and were in violation of Rule 1 C, Rules for Discipline of Attorneys, Canon 29 of the code of ethics, and Rule 1 M, Rules for Discipline of Attorneys, as, by making and publishing same, he failed to attempt to uphold the honor and to maintain the dignity of the profession, and constituted a course of conduct demonstrating unfitness to practice law.

As to Item V of the Complaint

The statements made publicly by respondent that he would not obey Judge Shorett's temporary injunction and the other comments and statements referred to in the findings with reference to the fifth item of the amended formal complaint constitute a violation of Rule 1 C, Rules for Discipline of Attorneys, in that, by making same, he failed to maintain the respect due courts of justice and judicial officers, violated Rule I J of said Rules and constituted a violation of Canon 29 in that he failed to maintain toward the court a respectful attitude, failed to uphold the honor and to maintain the dignity of the profession, and violated Rule 1 M of said Rules for Discipline of Attorneys in that his conduct demonstrated unfitness to practice law.

As to Item VI of the Complaint

Bar counsel failed to introduce evidence in support of the sixth item of said complaint, and such item should be dismissed.

As to Item VII of the Complaint

The evidence produced under the seventh item of the complaint did not establish misconduct on the part of respondent, as charged in said item, and such item should be dismissed.

As to Item VIII of the Complaint

The evidence produced under the eighth item of the complaint did not establish misconduct on the part of respondent, as charged in said item, and such item should be dismissed.

As to Item IX of the Complaint

The commentary and remarks on matters extraneous to the proceedings being conducted by respondent in his court room tended to degrade and detract from the importance and seriousness of court proceedings, and were made to newspaper reporters and other persons not personally interested in such proceedings, and such actions by respondent were in violation of Rule 1 C, 3 and M, Rules for Discipline of Attorneys, in that, by making such statements, he violated his oath as an attorney, failed to maintain the respect due to courts of justice and judicial officers, failed to strive to uphold the honor and to maintain the dignity of the profession, and to improve not only the laws but the administration of justice, and his conduct in this regard demonstrated unfitness to practice law.

GENERAL CONCLUSION

The evidence submitted to the Hearing Panel shows that respondent was guilty of acts involving moral turpitude and he violated his oath and duties as an attorney, violated various Canons of ethics adopted by the Supreme Court of the State of Washington; that he not only failed to uphold, to honor and to maintain the dignity of the profession, but by his conduct, held it up to widespread, notorious publicity and disrespect, and by all of such acts clearly demonstrated his unfitness to practice law.

RECOMMENDATIONS

Based upon its findings as to Items II, VI, VII and

VIII, the Hearing Panel recommends that each of said items of the amended formal complaint be dismissed.

Based upon its findings as to Items I, III, IV, V and IX of the amended formal complaint, this Hearing Panel recommends that William H. Simmons, this respondent, be permanently disbarred as an attorney of the State of Washington.

DATED THIS 3rd day of October, 1962.

DALE MCMULLEN,
Member of Board of Governors,
Chairman of Hearing Panel

ROBERT B. ALBERTSON,
Member of Hearing Panel

DAVID C. HUNTER,
Member of Hearing Panel.

Appendix C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re WILLIAM H. SIMMONS, An attorney at law	Report of the Board of Governors.

By direction of the Board of Governors of the Washington State Bar Association, a formal complaint as to William H. Simmons, an attorney at law, living and practicing in Seattle, was served on July 20, 1961.

The complaint contained two items: the first alleging conviction of a crime involving moral turpitude, assault in the second degree with intent to commit rape, in King County Cause No. 34733, on December 7, 1960; the second alleging the filing of a false affidavit that he was indigent on March 20, 1961, in Cause No. 34733 in support of a motion for an order directing the clerk of court to prepare a transcript for appeal at county expense. (File 1).

Answer to the formal complaint was served on August 9, 1961. This answer denied the referred to allegations of the complaint. (File 3) Notice of hearing panel members was served on July 20, 1961, (File 2) and Notice of Date of Hearing was served on September 5, 1961. (File 4) A motion for a continuance was served by respondent on September 22, 1961. (File 5) On that same day respondent served a challenge to hearing panel member James L. Leavy. (File 6) On March 13, 1963, respondent served a Request for Public Hearing. (File 7) On December 8, 1961, a new Notice of Date of Hearing was served on respondent. (File 9) The Bar Association moved for a continuance of hearing on February 19, 1962. (File 11) which

was granted on February 28, 1962. (File 10) Thereafter on May 10, 1962 and June 9, 1962, the hearing date was further postponed.

On June 26, 1962, respondent was served with an Amended Formal Complaint containing nine items, (File 14) and on that date hearing was again postponed. (File 15).

The First Item of the Amended Formal Complaint alleged violation of Rule 1 A, C, J, and M of the Rules for Discipline of Attorneys in that respondent took one Mrs. Betty Adams to a Seattle apartment with the intention of engaging in sexual intercourse. Prior to this occurrence, the item alleges that respondent met Mrs. Adams in the course of his duties as Municipal Traffic Judge, arranged a luncheon date with her and endorsed warning upon a speeding citation.

Item Two alleges a violation of Rule 1 B, C, J, and M of the Rules for Discipline of Attorneys in that respondent was in contempt of Superior Court for King County on March 10, 1961.

Item Three alleges violation of Rule 1 C, J, and M of the Rules for Discipline in that during the period August 1, 1960, through March 1961, respondent made numerous statements and comments to newspaper reporters for publication concerning pending or anticipated litigation.

Item Four alleges violation of Rule 1 C, J, and M of the Rules for Discipline of Attorneys in that the statements and comments referred to in Item Three of the Amended Formal Complaint were of derrogatory, inflammatory and offensive nature.

The Fifth Item alleges violation of Rule 1 C, J, and M of the Rules of Discipline of Attorneys in that respondent made derrogatory remarks to newspaper reporters concern-

ing a Superior Court Judge and his ruling in King County Case No. 564360.

The Sixth Item alleges violation of Rule 1 C, J, and M of the Rules for Discipline of Attorneys in that on July 14, 1959, respondent used obscene language, made an obscene gesture, touched a woman between her legs without her permission or consent, and passed out business cards in a Renton tavern.

The Seventh Item alleges violation of Rule 1 C, J, and M of the Rules for Discipline of Attorneys in that he dismissed approximately 100 traffic citations without regard to the merits of such cases or their procedural status while acting or purporting to act as Municipal Judge.

The Eighth Item alleges violation of Rule 1C, J, and M of the Rules for Discipline of Attorneys in that he permitted the televising of court proceedings while holding or purporting to hold court as Municipal Judge.

The last item of the complaint alleges violation of Rule 1 C, J, and M in that respondent, while holding or purporting to hold court, carried on a commentary and made remarks to newspaper reporters and television, extraneous to the proceedings, in such a manner as too degrade and detract from the seriousness of court proceedings.

Respondent, on July 6, 1962, served and filed a Special Appearance for Objection to Notice to Answer and Motion to Quash. (File 16) Thereafter, two notice of hearing panel members (File 18 and 19) and three orders postponing hearings (Files 15, 17, and 20) were filed. On August 3, 1962, respondent filed his Answer to Amend Formal Complaint, denying most of the allegations contained in the Amended Formal Complaint, (File 21) and on August 10, 1962, filed Interrogatories (File 22) and a motion for continuance. (File 23) An Order Postponing Hearing was

entered on August 16, 1962, (File 24) and on August 29, 1962, a Demand for Answers to Interrogatories was served. (File 25).

Hearing was held before a panel on September 10th and 11th, 1962. The panel consisted of Mr. Dale McCullen, Board member of Vancouver, Washington, Chairman, and Mr. Robert B. Albertson, who acted as Secretary, and Mr. David C. Hunter, both Seattle attorneys. Mr. Simmons appeared in person and was represented by his counsel, Phillip R. McIntosh.

The panel filed its findings, conclusions and recommendations on October 3, 1962. (File 28) The hearing panel recommended that Items II, VI, VII and VII1 of the Amended Formal Complaint be dismissed.

The panel's findings, conclusions and recommendations, together with a copy of Rule VIII, were duly served. On November 8, 1962, respondent filed a Statement in Opposition to findings, conclusions and recommendations of the panel. (File 29) A transcript of the testimony at the panel hearing having been obtained and a copy delivered to respondent in accordance with Rule VIII, a Stipulation and Order correcting transcript and certifying the same as corrected was entered on December 27, 1962. (Files 26, 27).

The record was circulated to the Board of Governors, beginning on January 7, 1963. The record circulated consisted of the following:

1. The Files—Items 1 through 29, as listed in the folder;
2. The transcript of the testimony in one volume;
3. The Exhibits—Association's, 1 to 6
   Respondent's, 1 to 3.

After each member of the Board, with the exception of

Mr. McMullen, who, in accordance with Rule VIII D, took no part in the review, had read this record, the Board, in meeting, again reviewed the record on April 26, 1963.

The Board of Governors approved the findings, conclusions, and recommendations of the hearing panel and adopted them as its own; and it is the recommendation of the Board to the Supreme Court that Mr. William H. Simmons be permanently disbarred as an attorney of the State of Washington.

There accompanies this report all of the items of the record above mentioned. To this report, of which 15 copies are filed, there is attached a copy of the findings, conclusions and recommendations of the hearing panel.

Respectfully submitted,

/s/ ALFRED MCBEE,
President of the Washington

/s/ JEREMIAH M. LONG,
State Bar Counsel, Washington
State Bar Association